

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
FLOWER WORLD, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 85-156

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of the imposition of a civil penalty in the sum of \$250 for a violation of Subsection 9.03(b)(1) of Regulation I of the Puget Sound Air Pollution Control Agency, came on for formal hearing before the Pollution Control Hearings Board; Wick Dufford, Gayle Rothrock and Lawrence J. Faulk (Presiding) on October 2, 1985 at Seattle, Washington.

Appellant, Flower World Inc. appeared pro se through its president, John A. Postema. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) appeared by its attorney Keith McGoffin. The

1 proceedings were reported by Laura D. Rawlins, Court Reporter, with
2 Calmes and Associates.

3 Witnesses were sworn and testified. Exhibits were admitted and
4 examined. Argument was heard. From the testimony, evidence and
5 argument, the Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent PSAPCA is a municipal corporation with responsibilities
9 for conducting a program of air pollution prevention and control in a
10 multi-county area which includes King County. The agency has
11 submitted a certified copy of its Regulation I. Judicial notice is
12 taken of that document.

13 II

14 Appellant is a commercial greenhouse in the business of raising
15 flowers for both retail and wholesale customers. The company is
16 located on eight acres of land at 19127 99th Avenue S.E. in Snohomish,
17 Washington. The company has been located at this site ever since it
18 was started in 1979. It started with one greenhouse.

19 III

20 About a year ago, appellant expanded and installed a new
21 greenhouse next door to his neighbor.

22 Wood burning air tight barrels were installed and operated as wood
23 stoves to keep the greenhouses warm.

24 IV

25 On June 6, 1985 in the morning while a routine patrol, PSAPCA's
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-156

1 inspector observed two white plumes of smoke coming from appellant's
2 property. The inspector properly positioned himself and began his
3 observations. He used only one of the plumes for documentation. His
4 readings indicate the the opacity was 100 percent over a six and one
5 half minute observation period. The inspector also took pictures of
6 the plumes, which verify the testimony of his observations.

7 V

8 The plumes in question persisted in the manner characteristic of
9 smoke and did not dissipate as rapidly as steam would be expected to.
10 PSAPCA's inspector testified that, on the basis of his observations,
11 he did not think steam was a very significant factor in the plumes.

12 We find that the opacity of the plumes was not solely the result
13 of the presence of uncombined water. Further, we find that the
14 opacity readings documented were, in fact, correct.

15 VI

16 On June 7, 1985, PSAPCA's inspector wrote a Notice of Violation
17 and mailed it to appellant.

18 VII

19 On July 16, 1985, PSAPCA issued to Flower World a civil penalty in
20 the amount of \$250 for exceeding the agency's opacity standard on June
21 6, 1985. On August 12, 1985, this Board received Flower World's
22 appeal.

23 VIII

24 Since the event on June 6, 1985 appellant has installed gas
25 heaters in the greenhouses at a cost of approximately \$10,000. The

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-156

1 wood stoves are only used occasionally or in an emergency.

2 IX

3 As a matter of policy, PSAPCA does not issue a warning when a
4 violation of the regulations is detected. It routinely issues a
5 Notice of Violation. A civil penalty, however, is not assessed in
6 every case. The agency evaluates each violation to determine whether
7 to impose a civil penalty. Both the nature and circumstances of the
8 violation and the past record of the alleged violator are considered.
9 PSAPCA views the civil penalty not as merely punitive but as an
10 instrument for changing behavior. The maximum penalty allowed for an
11 opacity violation is \$400. .

12 X

13 In this instant case, there is no evidence of harm. The operation
14 was small-scale, limited to two plumes which rose straight up. The
15 plumes were of minor size. The winds were calm. Neither the fact nor
16 the likelihood of injury to humans or other living things or of
17 unreasonable interference with the enjoyment of life and property were
18 demonstrated.

19 XI

20 This case presents the first air pollution citation ever written
21 for the appellant company. The president testified that, having
22 learned about the possibility of opacity violations, the company
23 installed gas heaters. No violations of the opacity standard or any
24 other of PSAPCA's regulations have been recorded by the agency since
25 the event at issue.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-156

1 XII

2 Any Conclusion of Law which is deemed a Finding of Fact is hereby
3 adopted as such.

4 From these Findings, the Board came to these

5 CONCLUSIONS OF LAW

6 I

7 The Board has jurisdiction over the issues and the parties.

8 II

9 Appellant argues that the plume in question was entirely steam.
10 We have found otherwise, and therefore the exception to the opacity
11 standard provided by Regulation I, Section 9.03 (e) does not apply
12 here. Chemithon Corp. v. PSAPCA, 31 Wn.App. 279 (1982)

13 III

14 The Board concludes that PSAPCA Regulation I, Section 9.03(b),
15 which prohibits opacity exceeding 20% for more than three minutes in
16 an hour, was violated by appellant's greenhouse operation on June 6,
17 1985.

18 IV

19 The Civil penalty sanction of RCW 70.94.431 is aimed primarily at
20 deterrence - both specific and general. In light of all the
21 circumstances, the Board concludes the purposes of the State Clean Air
22 Act will be adequately served by a penalty of lesser severity in this
23 case.

24 The nature of the violation is a minor infraction of a standard,
25 principally applied to stack emissions of much greater volume. No

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-156

1 ambient air particulate problem in the area was shown; nor was there
2 anything else in the circumstances which might legitimately lend
3 gravity to the offense. Moreover, it was a first-time violation,
4 unrepeatd since, and the violator has changed his operations to a new
5 system which in the future should avoid such problems.

6 The appropriate sanction here would be to require the immediate
7 payment of \$100. The remainder of the \$250 penalty should be
8 suspended on condition that appellant commit no future violations of
9 Section 9.03(b) for the next year.

10 V

11 Any Finding of Fact which is deemed a Conclusion of Law is hereby
12 adopted as such.

13 From these Conclusions, the Board enters this
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ORDER

The violation asserted by PSAPCA's notice and order of civil penalty No. 6297, issued on July 16, 1985 to Flower World is affirmed; however \$150 of the civil penalty is suspended on condition that appellant commit no future violations of PSAPCA Regulation I, Section 9.03(b) for one year from the date of this order. If this condition is met, the penalty shall be removed from PSAPCA's records of outstanding fines. If the condition is not met, the penalty shall become due and shall be paid.

DONE this 21st day of October, 1985.


POLLUTION CONTROL HEARINGS BOARD

 10/21/85

LAWRENCE J. FAULK, Chairman

(Not Available for Signature)

GAYLE ROTHROCK, Vice Chairman



WICK DUFFORD, Lawyer Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 85-156